

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**DATE: OCTOBER 23, 2008**

**JUDGE  
LEONARD DAVIS**

**COURT REPORTER:  
Shea Sloan**

**LAW CLERKS:** Andrea Houston, Matt Acosta, David Shenk

<b>MASS ENGINEERED DESIGN, ET AL.</b>  <b>vs</b>  <b>ERGOTRON, INC., ET AL.</b>	<b>2:06-CV-272 PATENT CASE  PRETRIAL CONFERENCE</b>
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ATTORNEYS FOR PLAINTIFFS	ATTORNEYS FOR DEFENDANTS
Max Tribble, Susman Godfrey Justin Nelson, Susman Godfrey John Neukom, Susman Godfrey Stephen Schlather, Susman Godfrey Jonathan Pierce, Conley Rose Greg Maag, Conley Rose Chris Bunt, Parker Bunt Charles Ainsworth, Parker Bunt	Kurt Niederluecke, Fredrikson & Byron Lora Friedemann, Fredrikson & Bryon Eric Findlay, Ramey & Flock Casey Kniser, Patterson Thuente Brian Dietzel, Wilson Sonsini Matthew Reed, Wilson Sonsini Natalie Morgan, Wilson Sonsini Blake Erskine, Erskine & McMahon

On this day, came the parties by their attorneys and the following proceedings were had:

<b>OPEN:</b> 9:05 am	<b>ADJOURN:</b> 3:40 pm
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TIME:	MINUTES:
9:05 am	Case called.
9:08 am	Mr. Tribble introduced the parties for Plaintiff as Justin Nelson, Jonathan Pierce, Greg Maag, John Neukom, Stephen Schlather, Chris Bunt, Charlie Ainsworth, and client, Jerry Moscovitch.
	Mr. Findlay introduced the parties for Defendants as Kurt Niederluecke, Lora Friedemann, Casey Kniser, Brian Dietzel, Matthew Reed, Natalie Morgan, Craig Tyler and Blake Erskine.
	Blake Erskine for Dell
	Casey Kniser CSAV

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TIME:	MINUTES:
9:12 am	Court asked for discussion as to how much time is needed by the parties to try the case. Mr. Nelson discussed on behalf of Plaintiff. Mr. Tyler discussed on behalf of Defendants
9:16 am	Court responded that in most cases 15 hours is given for each side. Court will address at a later time.
9:18 am	Court in recess.
9:49 am	Court reconvened. Court inquired of the parties as to jury selection and evidence timing in the case. Mr. Tribble responded. Court recommended that a jury be picked on November 4 <sup>th</sup> and the case go into evidence immediately after jury selection. Mr. Tyler and Mr. Tribble advised the Court of their need to contact witnesses and experts. The Court instructed that the Court be advised tomorrow, 10.24.2008 as to availability.
9:51 am	Court asked for brief opening statement. Mr. Tribble stated that plaintiffs collectively have ten pending motions in limine to be discussed, and three motions. Mr. Tyler represented that defendants collectively have ten motions in limine, three pending motions, and two Daubert motions. Mr. Niederluecke for his defendants has three motions. Mr. Kniser for CSAV has one motion. Mr. Tyler stated that the parties do have pending jury charge issues. Mr. Tyler stated that there are three matters to be discussed, a question of inventorship, defective reissue, and implied license. Parties asked for jury questionnaire.
9:58 am	<b>Court agreed to a jury questionnaire to be one page and submitted to the Court for review and approval no later than October 30th.</b>
9:58 am	Court asked for fact brief opening statements from the parties.
9:58 am	Mr. Nelson provided statement for Plaintiff.
10:12 am	Court questioned trying issues together or separately.
10:12 am	Mr. Nelson responded.
10:13 am	Mr. Tyler provided statement for Defendant.
10:15 am	Court inquired as to the relationships between the parties.
10:16 am	Mr. Tyler and Mr. Niederluecke responded.
10:19 am	Court inquired as to Dell's adverse parties. Mr. Tyler responded.
10:28 am	Mr. Niederluecke responded.
10:32 am	Mr. Kniser responded.
10:33 am	<b>Court called for discussion on Motion No. 389, Dell &amp; Dell Marketing Motion to Strike Portions of Bratic Report.</b>
10:34 am	Ms. Morgan, for Defendant, presented issues. The Court, Mr. Nelson for Plaintiff, Mr. Niederluecke for Defendant, and Ms. Morgan discussed.

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<b>TIME:</b>	<b>MINUTES:</b>
10:55 am	<b>Court DENIED Motion #389</b> with instruction to Dell to file an amended report. Ms. Friedemann requested same on behalf of Ergotron. Court <b>GRANTED</b> the motion. Ms. Morgan requested a new opinion be issued. Court <b>DENIED</b> .
10:55 am	<b>Court called for discussion on Motion #400</b> , Mass & Moscovitch MSJ that no Bloomberg LP employee co-invented the '978 patent. Mr. Tribble presented the issues. Mr. Niederluecke responded. Court reviewed documents and the parties discussed issues relative to invention and corroboration.
11:13 am	<b>Court DENIED Motion #400</b> , without prejudice for Plaintiff to re-raise the issues at the appropriate time.
11:14 am	<b>Court called for discussion on Motion #521</b> , Motion to Strike. Mr. Niederluecke presented issues on behalf of Defendants and Mr. Pierce responded on behalf of Plaintiff.
11:21 am	<b>Court DENIED Motion #521.</b>
	<b>Court DENIED Motion #404 as moot.</b>
	<b>Court DENIED Motion #405 as moot.</b>
11:22 am	<b>Court called for discussion on Motion #406</b> , Ergotron, CSAV, CDW and Tech Data's Motion for Summary Judgment for Non-Infringement. Ms. Friedemann presented issues on behalf of Defendants. Mr. Nelson responded.
11:39 am	<b>Court DENIED Motion #406.</b>
11:39 am	<b>Court called for discussion on Motion #408</b> , CSAV's Motion for Summary Judgment for Non-Infringement of '978 Patent. Mr. Kniser presented issues on behalf of Defendants. Mr. Pierce responded.
11:48 am	<b>Court DENIED Motion #408.</b>
11:50 am	Recessed until 1:00 pm.
1:00 pm	Court resumed.
1:03 pm	<b>Motion #411, DENIED as moot.</b>
1:03 pm	<b>Court called for discussion on Motion #415</b> , Dell's Motion to Reconsider Dell's Motion for Summary Judgment. Do the parties wish to discuss or rule on the pleadings. Response was to rule on the pleadings.
1:04 pm	<b>Court DENIED Motion #415.</b>
1:04 pm	<b>Court called for discussion on Motion #418</b> , Ergotron's Motions for Summary Judgment of Invalidity and Inequitable Conduct. Mr. Niederluecke presented issues on behalf of Defendant. Mr. Nelson responded for Plaintiff.
1:19 pm	<b>Court DENIED Motion #418.</b>
1:19 pm	<b>Motion #423, DENIED as moot.</b>

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<b>TIME:</b>	<b>MINUTES:</b>
1:19 pm	<b>Court called for discussion on Motion #425</b> , CDW's Motion for Summary Judgment for Lack of Standing. Ms. Friedemann presented for Defendants. Mr. Nelson responded for Plaintiff.
1:23 pm	<b>Court DENIED Motion #425.</b>
1:23 pm	<b>Court called for discussion on Motion #443</b> , Mass's Renewed Motion for Spoliation Instruction. Mr. Nelson presented for Plaintiffs. Mr. Niederluecke responded for Defendants. Court questioned the parties.
1:49 pm	<b>Court carrying this motion into the trial to consider it at that time.</b>
1:50 pm	<b>Court called for discussion on Motion #445</b> , Defendant's collective Daubert Motion to Exclude Bratic. Do the parties wish to discuss or rule on the pleadings. Response was to rule on the pleadings.
1:50 pm	<b>Court DENIED Motion #445.</b>
1:51 pm	<b>Court called for discussion on Motion #466</b> , Mass Motion to Compel Interview Notes of Waraksa. Mr. Tribble presented for Plaintiffs. Mr. Niederluecke responded for Defendants.
2:05 pm	<b>Court taking Motion #466 under advisement.</b>
2:06 pm	<b>Court GRANTED Motion #403 as unopposed.</b>
2:07 pm	<b>Court called for discussion on Motion #422</b> , Dell's Motion for Summary Judgment re Infringement and related <b>Motion #410</b> , Dell's Daubert re Akin. Mr. Dietzel presented for Defendants. Mr. Maag responded for Plaintiff.
2:16 pm	<b>Court DENIED Motion #422.</b> <b>Court DENIED Motion #410.</b>
2:17 pm	<b>Court DENIED Motion #447 as moot.</b>
2:19 pm	<b>Court called for discussion on Motion #416</b> , Mass's Motion for Summary Judgment re Implied License, and related <b>Motion #484</b> , Dell's Motion to Strike Mass's Summary Judgment Evidence. Mr. Nelson presented for Plaintiff. Ms. Morgan responded.
2:25 pm	<b>Court DENIED Motion #416.</b> <b>Court DENIED Motion #484. Issued as to the implied license to the jury.</b>
	<b>Court DENIED Motion # 413 as moot.</b>
	Agreed between the parties that any matter pertaining to alter-ego will not be heard by the jury but will be discussed with the Court after trial.
2:30 pm	<b>Mass's Motions in Limine #582:</b>
2:30 pm	<b>#30.</b> Mr. Trimble presented. Mr. Reed responded. Mr. Tyler responded. <b>Motion GRANTED.</b>

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TIME:	MINUTES:
2:32 pm	<b>#31.</b> Mr. Trimble presented. Mr. Niederluecke responded. <b>Motion GRANTED.</b>
2:36 pm	<b>#32.</b> Mr. Pierce presented. Mr. Niederluecke responded. <b>Motion GRANTED.</b>
2:39 pm	<b>#33.</b> Mr. Pierce presented. Mr. Niederluecke responded. <b>Motion GRANTED.</b>
2:40 pm	<b>#35.</b> Mr. Trimble presented. Ms. Friedemann responded. <b>Motion GRANTED.</b>
2:41 pm	<b>#36 and #40 GRANTED.</b>
2:44 pm	<b>#58.</b> Mr. Nelson presented. Ms. Friedemann responded. <b>Motion GRANTED.</b>
2:50 pm	<b>#37.</b> Mr. Pierce presented. Mr. Kniser responded. <b>Motion GRANTED.</b>
2:52 pm	<b>#39.</b> Mr. Nelson presented. Mr. Niederluecke responded. Court and Mr. Trimble discussed sanctions. <b>Motion GRANTED.</b>
2:55 pm	Mr. Tyler asked question re Motion in Limine #58. Court responded.
	<b>#43 and #51 withdrawn and DENIED</b> as moot.
	Mr. Trimble requested that a new pleading containing the updated Motions in Limine be filed with the Court later today. <b>Court GRANTED.</b>
2:57 pm	<b>CSAV's Motion in Limine #572 withdrawn and is DENIED</b> as moot.
2:58 pm	<b>CSAV's Motion in Limine #573.</b> Mr. Kniser presented. Mr. Nelson responded. <b>Court DENIED.</b>
2:59 pm	<b>Dell's Motion in Limine #575:</b>
	<b># 4.</b> Mr. Reed presented. Mr. Maag responded. <b>Court GRANTED.</b>
3:08 pm	<b>#18.</b> Mr. Reed presented. Mr. Nelson responded. <b>Court DENIED.</b>
3:09 pm	<b>#22.</b> Mr. Reed presented. Mr. Nelson responded. <b>Court DENIED.</b>
3:12 pm	<b>Ergotron's Motion in Limine #580:</b>
	<b>#1.</b> Mr. Niederluecke presented. Mr. Nelson responded. <b>Court GRANTED.</b>
3:17 pm	<b>#2.</b> Ms. Friedemann presented. Mr. Nelson responded. <b>Court DENIED.</b>
3:20 pm	<b>#4.</b> <b>Court DENIED.</b> Discussed license...
3:21 pm	<b>#5.</b> Ms. Friedemann presented. Mr. Nelson responded that this is a Daubert motion, but responded. <b>Court DENIED.</b>
3:22 pm	<b>#10.</b> Motion withdrawn and <b>DENIED</b> as moot.
3:23 pm	<b>#12.</b> Mr. Niederluecke presented. Mr. Nelson responded. Ms. Friedemann responded. Mr. Tyler responded. <b>Court DENIED.</b>

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<b>TIME:</b>	<b>MINUTES:</b>
3:32 pm	For Defendants, Ms. Friedemann has issue with the Joint pretrial and stipulated facts. Mr. Nelson responded that the parties would work tog
3:33 pm	Court recommends that case go away, inquiring as to status of mediation. Mr. Tribble responded that Plaintiffs are always willing to continue settlement negotiations. Mr. Niederluecke responded that Defendants are willing to discuss settlement, but did not feel the case would settle. Court asked Mr. Grainger, Mediator, to continue to meet with the parties to mediate for settlement.
3:40 pm	<b>Court adjourned.</b>